

separate accounting procedures provided in § 301.7512-1, the provisions of this section shall apply except those provisions shall not authorize the deferral of any deposit to a date after the date on which the return is required to be filed.

(2) *Wages paid in nonconvertible foreign currency.* The provisions of this section are not applicable with respect to wages paid in nonconvertible foreign currency pursuant to § 301.6316-7.

(1) [Reserved]

(m) *Cross references*—(1) *Failure to deposit penalty.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

(2) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503-1.

(n) [Reserved] For further guidance, see § 31.6302-1T(n).

[T.D. 8436, 57 FR 44102, Sept. 24, 1992; 57 FR 48724, Oct. 28, 1992, as amended by T.D. 8504, 58 FR 68035, Dec. 23, 1993; T.D. 8436, 59 FR 6218, Feb. 10, 1994; T.D. 8723, 62 FR 37493, July 14, 1997; T.D. 8771, 63 FR 32736, June 16, 1998; T.D. 8822, 64 FR 32409, June 17, 1999; T.D. 8828, 64 FR 37676, July 13, 1999; T.D. 8909, 65 FR 76153, Dec. 6, 2000; T.D. 8946, 66 FR 28370, May 23, 2001; T.D. 8947, 66 FR 32542, June 15, 2001; T.D. 8952, 66 FR 33831, 33832, June 26, 2001; T.D. 9239, 71 FR 13, 15, Jan. 3, 2006; T.D. 9405, 73 FR 37379, July 1, 2008; T.D. 9440, 73 FR 79359, Dec. 29, 2008]

§ 31.6302-1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(3) [Reserved] For further guidance, see § 31.6302-1(a) through (b)(3).

(4) *Lookback period*—(i) *In general.* For employers who file Form 941, “Employer’s QUARTERLY Federal Tax Return,” the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004, to June 30, 2005. The lookback period for employers who file Form 944, “Employer’s ANNUAL Federal Tax Return,” or filed Form 944 either of the

two previous calendar years, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Form 941 or Form 944) for the lookback period. The amount of employment tax liabilities reported for the lookback period is the amount the employer reported on either Form 941 or Form 944 even if the employer is required to file the other form(s) for the current calendar year. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and claims for refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the aggregate amount of employment taxes reported for the lookback period exceeds \$50,000. Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413 and 6414 filed after the due date of the original return are not taken into account when determining the aggregate amount of employment taxes reported for the lookback period. However, prior period adjustments reported on Forms 941 or 944 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(c)(1) through (c)(4) [Reserved] For further guidance, see § 31.6302-1(c)(1) through (c)(4).

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers’ Annual Federal Tax Program (Form 944).* Generally, an employer who files Form 944 for a taxable year may remit its accumulated employment taxes with its timely filed return for that taxable year and is not required to deposit under either the monthly or semi-weekly rules set forth in § 31.6302-1(c)(1) and (2) during that taxable year. An employer who files Form 944 whose

actual employment tax liability exceeds the eligibility threshold, as set forth in §§ 31.6011(a)-1T(a)(5) and 31.6011(a)-4T(a)(4), will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who filed Form 944 for the preceding year but will file Forms 941 instead for the current year will be deemed to have timely deposited its current year's January deposit obligation(s) under § 31.6302-1(c)(1) through (4) if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(d) *Examples 1 through 5 [Reserved]* For further guidance, see § 31.6302-1(d) *Examples 1 through 5.*

Example 6. Extension of time to deposit for employers who filed Form 944 for the preceding year satisfied. F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of \$3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded \$1,000 (the applicable eligibility threshold for that taxable year), the Internal Revenue Service (IRS) notified F to file Forms 941 for calendar year 2007 and thereafter. Based on F's liability during the lookback period (calendar year 2005, pursuant to paragraph (b)(4)(i) of this section), F is a monthly depositor for 2007. F accumulates \$1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates \$1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the \$2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to § 31.6302-1T(c)(6), F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e)(1) [Reserved] For further guidance, see § 31.6302-1(e)(1).

(2) The term *employment taxes* does not include taxes with respect to wages for domestic service in a private home of the employer, unless the employer is otherwise required to file a Form 941 or Form 944 under § 31.6011(a)-4, § 31.6011(a)-4T, or § 31.6011(a)-5. In the

case of employers paying advance earned income credit amounts, the amount of taxes required to be deposited shall be reduced by advance amounts paid to employees. Also, see § 31.6302-3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

(f)(1) through (f)(3) [Reserved] For further guidance, see § 31.6302-1(f)(1) through (f)(3).

(4) *De minimis rule*—(i) *De minimis deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is de minimis and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited. The total amount of accumulated employment taxes is de minimis if it is less than \$2,500 for the return period or if it is de minimis pursuant to paragraph (f)(4)(ii) of this section.

(ii) *De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.* For purposes of paragraph (f)(4)(i) of this section, if the total amount of accumulated employment taxes for the immediately preceding quarter was less than \$2,500, unless § 31.6302-1(c)(3) applies to require a deposit at the close of the next banking day, then the employer will be deemed to have timely deposited the employer's employment taxes for the current quarter if the employer complies with the time and method payment requirements contained in paragraph (f)(4)(i) of this section.

(iii) *De minimis deposit rule for employers who file Form 944.* An employer who files Form 944 whose employment tax liability for the year equals or exceeds \$2,500 but whose employment tax liability for a quarter of the year is de minimis pursuant to paragraph (f)(4)(i) of this section will be deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment

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taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples 1 and 2* [Reserved] For further guidance, see § 31.6302-1(f)(5) *Examples 1 and 2*.

Example 3. De minimis deposit rule for employers who file Form 944 satisfied. K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of \$1,000. On April 28, 2006, K deposits the \$1,000 of employment taxes accumulated in the 1st quarter. K accumulates another \$1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the \$1,000 of employment taxes accumulated in the 2nd quarter. K's business grows and accumulates \$1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the \$1,500 of employment taxes accumulated in the 3rd quarter. K accumulates another \$2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of \$5,500 and submits a check for the remaining \$2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006, because K complied with the de minimis deposit rule provided in paragraph (f)(4)(iii) of this section. Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this de minimis deposit rule, as K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is de minimis, then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This de minimis rule allows K to have the benefit of the same quarterly de minimis amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, as K's employment tax liability for each quarter was de minimis, K could deposit quarterly.

(g) *Agricultural employers—special rules—(1) In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 or Form 944

("Form 941 or Form 944 taxes"). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302-1(c)(3) applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit Form 943 taxes and Form 941 or Form 944 taxes. (See § 31.6302-1(b) for rules for determining an agricultural employer's deposit status for Form 941 taxes.) The determination of whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is made according to the rules of this paragraph (g).

(g)(2) through (m) [Reserved] For further guidance, see § 31.6302-1(g)(2) through (m).

(n) *Effective/applicability dates—(1) In general.* Sections 31.6302-1 through 31.6302-3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§ 31.6302-1 through 31.6302-3 are inconsistent with the provisions of §§ 31.6302(c)-1 and 31.6302(c)-2, a taxpayer will be considered to be in compliance with §§ 31.6301-1 through 31.6302-3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)-1 and 31.6302(c)-2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302-1 in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006 and before December 30, 2008, are contained in § 31.6302-1T in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302-1 in effect prior to January 1, 2006.

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(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

[T.D. 9440, 73 FR 79359, Dec. 29, 2008; T.D. 9440, 74 FR 3421, Jan. 21, 2009]

§ 31.6302-2 Federal Tax Deposit Rules for amounts withheld under the Railroad Retirement Tax Act (R.R.T.A.) attributable to payments made after December 31, 1992.

(a) *General rule.* Except as otherwise provided in this section, the rules of § 31.6302-1 determine the time and manner of making deposits of employee tax withheld under section 3202 and employer tax imposed under sections 3221 (a) and (b) attributable to payments made after December 31, 1992. Railroad retirement taxes described in section 3221(c) arising during the month must be deposited on or before the first date after the 15th day of the following month on which taxes are otherwise required to be deposited under § 31.6302-1.

(b) *Separate application of deposit rules.* A person who accumulates tax under sections 3202 or 3221 shall not take that tax into account for purposes of determining when taxes described in paragraph (e) of § 31.6302-1 must otherwise be deposited.

(c) *Modification of Monthly rule determination—(1) General rule.* Except as otherwise provided in this section, any person is allowed to use the Monthly rule of § 31.6302-1(c)(1) for an entire calendar year unless the amount of R.R.T.A. taxes required to be deposited under this section during the lookback period was more than \$50,000. The lookback period is defined as the calendar year preceding the calendar year just ended. Thus, for purposes of determining if an R.R.T.A. employer qualifies to use the Monthly rule for calendar year 1993, a lookback must be made to calendar year 1991. New employers shall be treated as having employment tax liabilities of zero for any calendar year during which the employer did not exist.

(2) *Exception.* An employer shall immediately cease to be allowed to use the Monthly rule after any day on which that employer is subject to the One-Day rule set forth in § 31.6302-1(c)(3). Such employer immediately becomes subject to the Semi-Weekly rule

of § 31.6302-1(c)(2) for the remainder of the calendar year and the following calendar year.

(d) *Wire-transfer exception.* If, for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 with respect to an employer equalled or exceeded \$1 million, the employer must deposit the aggregate amount of railroad retirement taxes required to be deposited for the current calendar year in accordance with § 31.6302(c)-2(a)(1).

[T.D. 8436, 57 FR 44105, Sept. 24, 1992]

§ 31.6302-3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of section 3406 for payments made after December 31, 1992.

(a) *General rule.* The rules of § 31.6302-1 shall apply to determine the time and manner of making deposits of amounts withheld under the backup withholding requirements of section 3406.

(b) *Treatment of backup withholding amounts separately.* A taxpayer that withholds income tax under section 3406 with respect to reportable payments made after December 31, 1992, and before January 1, 1994, may, in accordance with the instructions provided with Form 941, deposit such tax under the rules of § 31.6302-1 without taking into account the other taxes described in paragraph (e) of § 31.6302-1 for purposes of determining when tax withheld under section 3406 must be deposited. A taxpayer that treats backup withholding amounts separately with respect to reportable payments made after December 31, 1992, and before January 1, 1994, shall not take tax withheld under section 3406 into account for purposes of determining when the other taxes described in paragraph (e) of § 31.6302-1 must otherwise be deposited under that section. See § 31.6302-4 for rules regarding the deposit of income tax withheld under section 3406 with respect to reportable payments made after December 31, 1993.

(c) *Example.* The following example illustrates the provisions of this section.